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devise does the privilege to receive devises exist. Under any construction, it is a tax upon the power of transmitting property by will. *Union Trust Co. v. Duffee* (1901) 125 Mich. 487, 84 N. W. 1101; *Stixrud's Estate* (1910) 58 Wash. 339, 109 Pac. 343; see Beers, *Inheritance Taxes in New York* (1914) 14 COL. L. REV. 237 ff. In spite of the confusion of opinion on the subject and even though the distinction between property and succession is perhaps only made to avoid general constitutional limitations, the theory of the decision seems sound. See Gleason & Otis, *Inheritance Taxation* (1917) 11; see NOTES (1918) 18 COL. L. REV. 475. For descent is a creature of statute and not a natural right. *State v. Hamlin* (1894) 86 Me. 495, 30 Atl. 76; 2 Blackstone, *Commentaries* 11; see *United States v. Perkins* (1895) 163 U. S. 625, 627, 16 Sup. Ct. 1073, 1075. The payment of the sum desired by the sovereign power is then a condition precedent to the acquisition of ownership of the remainder by the legatee. The ruling of the commissioner of internal revenue in the instant case states that the inheritance tax could not be deducted in computing the income tax liability of the estate itself. Upon the theory of the instant case this seems to be sound, for the tax is not upon the estate of the decedent. Similarly, federal estate taxes are not deductible. But interest paid with respect to deferred payments of such taxes would be deductible. See Holmes, *Federal Taxes* (1920) 79, 367.

TORTS—COLLECTING DANGEROUS SUBSTANCES ON ONE'S PREMISES—RULE IN *RYLANDS v. FLETCHER*.—The defendants had collected great quantities of di-nitrophenol (D.N.P.) upon their premises for use in the manufacture of picric acid. The evidence tended to show that this substance, which had previously been used chiefly in dyeing processes, was stable, hard to ignite, and not considered a dangerous explosive unless collected in great quantities and subjected to intense heat. Some nitrate of soda, a highly oxidized substance, had been stored in the same room containing this D.N.P., and a fire that started amongst the nitrate of soda containers spread to those of the D.N.P. This caused it to explode and damage the plaintiff's property, for which this action was brought. *Held*, that the defendants were liable under the principle of *Rylands v. Fletcher* without considering the question of nuisance or negligence. Younger, L. J., *dissenting*. *Belvedere Fish Guano Co. Ltd. v. Rainham Chemical Works Ltd.* [1920, C. A.] 2 K. B. 487.

The doctrine of *Rylands v. Fletcher* has not been generally followed in this country. It has been ably criticised and repudiated in many jurisdictions. *Brown v. Collins* (1873) 53 N. H. 442; *Losee v. Buchanan* (1873) 51 N. Y. 476. The doctrine, however, has met with approval in a few states where the principle has been applied to cases involving blasting operations and those where gas, oil, water, or explosives have been collected upon the defendant's land and by their escape have caused damage to neighboring premises. *Brennan Construction Co. v. Cumberland* (1907) 29 App. D. C. 554, 15 L. R. A. (N. S.) 535, note; *Weaver Mercantile Co. v. Thurmond* (1911) 68 W. Va. 530, 70 S. E. 126; see (1916) 25 YALE LAW JOURNAL, 681. But generally wherever the principle has been applied, the same result would probably have been reached without it. See Bohlen, *The Rule in Rylands v. Fletcher* (1911) 59 U. OF P. L. REV. 433; Thayer, *Liability Without Fault* (1916) 29 HARV. L. REV. 801. There has been a growing tendency to limit the application of this doctrine to unusual and extraordinary uses of land, even in jurisdictions where it has been most generally accepted. *Ainsworth v. Lakin* (1902) 180 Mass. 397, 62 N. E. 746; *City Water Co. v. City of Fergus Falls* (1910) 113 Minn. 33, 128 N. W. 817. The principal case, like similar ones lately decided, shows that the English courts still consider *Rylands v. Fletcher* good law, despite the severe criticism it has undergone; and that there may no longer be the "manifest inclination" that Sir Frederick Pollock spoke of, to discover something in the facts of the case to take it out of that rule.

See (1918) 27 YALE LAW JOURNAL, 965; Pollock, *Law of Fraud in British Indies* (1894) 53. The instant case might well have been decided on grounds of negligence, as the concurring opinion of Atkins, L. J., intimated, and while the case appears to have been properly decided, yet decisions unnecessarily based upon such broad grounds of liability cannot be said to aid in the progress of the law.

TORTS—NEGLIGENCE—RAILROAD'S DUTY TO A TRESPASSER.—While passing around a train which was blocking a public crossing, the plaintiff was struck by another train, operated by the defendant's servants. The evidence tended to show that it was customary for people of the city to pass around trains obstructing this crossing, not only with the flagman's consent, but even at his suggestion. As a result there was a well beaten path at the place where the injury occurred. There was no other evidence of contributory negligence. The lower court found for the plaintiff. *Held*, that the plaintiff should recover, since under the circumstances the defendant by its servants was under a duty to anticipate the presence of persons upon the tracks and to exercise special care and watchfulness to avoid injury to them. *St. Louis-San Francisco Ry. v. Jones* (1920, Okla.) 190 Pac. 385.

The majority doctrine imposes no affirmative duty to provide against injury to a trespasser until after his presence is known. *Cleveland, etc. Ry. v. Tartt* (1900, C. C. A. 7th) 99 Fed. 369; 2 Shearman & Redfield, *Negligence* (6th ed. 1913) ch. 21. Some courts have held that even then the only duty is to refrain from wilful and wanton acts likely to result in his injury. *Ellington v. Great Northern Ry.* (1905) 96 Minn. 176, 104 N. W., 827; *Tabor v. Phila. & R. Ry.* (1920, Pa.) 110 Atl. 167. Others have held that there is a duty to exercise ordinary care. *Baltimore & O. Ry. v. State* (1911) 114 Md. 536, 80 Atl. 170; *Ingram v. Jackson* (1917) 206 Ill. App. 466. The fact that the place where the accident occurred is habitually used by the public with acquiescence by the railroad, is often said to impose no greater duty upon the company, and to make the users no more than bare licensees with only the rights of trespassers. *Griswold v. Boston & M. Ry.* (1903) 183 Mass. 424, 67 N. E. 354; *Pittsburgh, etc. Ry. v. Philpott* (1920, Ind.) 127 N. E. 827. What constitutes wanton and wilful acts towards such a person is a question for the jury, but the mere failure to exercise ordinary care to prevent injury after a trespasser's presence is known, may under special circumstances amount to wantonness. *Tice v. Cent. of Ga. Ry.* (1920, Ga.) 103 S. E. 262; *Petrowski et al. v. Phila. & R. Ry.* (1919) 263 Pa. 531, 107 Atl. 381. Opposed to the foregoing line of authority is a growing minority doctrine which holds that with respect to any place on or near the tracks of a railroad where it is known trespassers are accustomed to be, there is a duty upon the company's servants to anticipate their presence, keep a reasonable lookout, and use ordinary care to avoid injury to them. *Donovan v. South & North Ala. Ry.* (1887) 84 Ala. 141, 4 So. 142; *Louisville & N. Ry. v. Clore* (1919) 183 Ky. 261, 209 S. W. 55. The reason for this is often said to be that long and continued use by the public with the railroad's consent and acquiescence ripens into an implied license and gives to the users the rights of licensees. *Anderson v. Chicago, etc.* (1894) 87 Wis. 195, 58 N. W. 79; *St. Louis S. W. Ry. v. Douthit* (1919, Texas) 208 S. W. 201. While the nature of the locality within which the user arises is an important factor, it is not necessary that the place be within the limits of a city. The number of persons, however, using the way may well be taken as a criterion of such a use as should impose the duty of a look out. *Louisville & N. Ry. v. Vaughn's Adm'rs* (1919) 183 Ky. 829, 210 S. W. 938. After discovering a trespasser apparently possessed of all the human faculties, the employees in charge may presume that he will conduct himself so as to avoid injury, and need not at once resort to emergency steps. *Campbell v. Kansas City etc. Ry.* (1895) 55 Kan. 536, 40 Pac. 997; *Elder v. Idaho-Wash. Ry.* (1914) 26 Idaho 209, 141 Pac. 985. But if collateral circumstances negative the presumption that the trespasser has